

1 AN ACT concerning environmental protection.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Environmental Protection Act is amended  
5 by changing Section 9.9 as follows:

6 (415 ILCS 5/9.9)

7 Sec. 9.9. Nitrogen oxides trading system.

8 (a) The General Assembly finds:

9 (1) That USEPA has issued a Final Rule published in  
10 the Federal Register on October 27, 1998, entitled  
11 "Finding of Significant Contribution and Rulemaking for  
12 Certain States in the Ozone Transport Assessment Group  
13 Region for Purposes of Reducing Regional Transport of  
14 Ozone", hereinafter referred to as the "NOx SIP Call",  
15 compliance with which will require reducing emissions of  
16 nitrogen oxides ("NOx");

17 (2) That reducing emissions of NOx in the State  
18 helps the State to meet the national ambient air quality  
19 standard for ozone;

20 (3) That emissions trading is a cost-effective  
21 means of obtaining reductions of NOx emissions; and -

22 (4) That the State must consider economic and  
23 technical factors when enacting rules in response to the  
24 NOx SIP Call in order to ensure the continued adequacy  
25 and stability of the Illinois electrical generation  
26 system.

27 (b) The Agency shall propose and the Board shall adopt  
28 regulations to implement an interstate NOx trading program  
29 (hereinafter referred to as the "NOx Trading Program") as  
30 provided for in 40 CFR Part 96, including incorporation by  
31 reference of appropriate provisions of 40 CFR Part 96 and

1 regulations to address 40 CFR Section 96.4(b), Section  
2 96.55(c), Subpart E, and Subpart I. In addition, the Agency  
3 shall propose and the Board shall adopt regulations to  
4 implement NOx emission reduction programs for cement kilns  
5 and stationary internal combustion engines.

6 (b-5) Following the effective date of this amendatory  
7 Act and before January 1, 2003, the Illinois Commerce  
8 Commission ("Commission") shall perform an economic and  
9 technical review and analysis of the electrical generation  
10 system and market for electricity in Illinois and present a  
11 detailed written report ("ICC Feasibility Analysis") to the  
12 General Assembly, the Agency, and the Board for review. The  
13 purpose of the Commission's review and analysis is to create  
14 an economic and technical assessment of the State's current  
15 and future electrical generating capacity; to identify facts  
16 or circumstances that could potentially affect electrical  
17 generation as a result of the NOx SIP Call and NOx Trading  
18 Program; to assist the Agency and the Board in considering  
19 economic and technical feasibility when enacting rules  
20 implementing the NOx Trading Program; to ensure continued  
21 adequacy and stability of the State's electrical generation  
22 system; and to ensure protection of the environment. The  
23 Commission shall, at a minimum, consider all of the following  
24 as part of its analysis:

25 (i) the reasonably anticipated increase or decrease  
26 in employment, population, and economic activity in the  
27 State and the related change in the demand for  
28 electricity;

29 (ii) the need for safe, reliable, efficient,  
30 affordable, and environmentally safe electric service in  
31 a competitive marketplace;

32 (iii) the age, condition, and reasonably expected  
33 life span of all EGUs located in or supplying electricity  
34 to Illinois;

1           (iv) permit applications for new EGUs on file with  
2           the Agency;

3           (v) on-going changes in the fuel supply for  
4           existing EGUs that are reasonably anticipated to increase  
5           or decrease NOx emissions from existing EGUs;

6           (vi) historical use and demand for allowances  
7           issued to existing EGUs;

8           (vii) impact of the NOx Trading Program on the  
9           continued economic development and the need for growth in  
10           the base load electric supply in Illinois;

11           (viii) impact of an output based (pounds per Mw-Hr  
12           of generation) allocation method on actual NOx reduction  
13           and growth in a reliable base load electric supply; and

14           (ix) benefits to the State of an emission allowance  
15           auction system where the State will retain all emission  
16           allowances allocated by the federal government for the  
17           purpose of auctioning emission allowances to the highest  
18           bidder within the State and where revenues from the  
19           auction shall be deposited in the State Treasury.

20           The Commission shall update the ICC Feasibility Analysis  
21           no less than once every 10 years and shall provide the  
22           updated analysis to the General Assembly, the Agency, and the  
23           Board. After receiving an updated ICC Feasibility Analysis,  
24           the General Assembly, the Agency, and the Board shall  
25           consider whether regulatory changes are appropriate.

26           (c) Allocations of NOx allowances to large electric  
27           generating units ("EGUs") and large non-electric generating  
28           units ("non-EGUs"), as defined by 40 CFR Part 96.4(a), shall  
29           not exceed the State's trading budget for those source  
30           categories to be included in the State Implementation Plan  
31           for NOx.

32           (d) In adopting regulations to implement the NOx Trading  
33           Program, the Board shall:

34                   (1) assure that the economic impact and technical

1 feasibility of NOx emissions reductions under the NOx  
2 Trading Program, and the assessment of that feasibility  
3 included in the ICC Feasibility Analysis, are considered  
4 relative to the traditional regulatory control  
5 requirements in the State for EGUs and non-EGUs;

6 (2) provide that emission units, as defined in  
7 Section 39.5(1) of this Act, may opt into the NOx Trading  
8 Program;

9 (3) provide for voluntary reductions of NOx  
10 emissions from emission units, as defined in Section  
11 39.5(1) of this Act, not otherwise included under  
12 paragraph (c) or (d)(2) of this Section to provide  
13 additional allowances to EGUs and non-EGUs to be  
14 allocated by the Agency. The regulations shall further  
15 provide that such voluntary reductions are verifiable,  
16 quantifiable, permanent, and federally enforceable;

17 (4) provide that the Agency allocate to non-EGUs  
18 allowances that are designated in the rule, unless the  
19 Agency has been directed to transfer the allocations to  
20 another unit subject to the requirements of the NOx  
21 Trading Program, and that upon shutdown of a non-EGU, the  
22 unit may transfer or sell the NOx allowances that are  
23 allocated to such unit; and

24 (5) provide that the Agency shall set aside  
25 annually a number of allowances, not to exceed 5% of the  
26 total EGU trading budget, to be made available to new  
27 EGUs.

28 (A) Those EGUs that commence commercial  
29 operation, as defined in 40 CFR Section 96.2, at a  
30 time that is more than half way through the control  
31 period in 2002 shall return to the Agency any  
32 allowances that were issued to it by the Agency and  
33 were not used for compliance in 2003.

34 (A-1) The Agency shall propose and the Board

1 shall adopt rules setting a maximum percentage of  
2 the EGU trading budget that shall be available for  
3 new EGUs, which shall be no less than 5% of the NOx  
4 Trading Budget ("Set Aside"). The Board may change  
5 the maximum allowance available to new EGUs no more  
6 than once per year and all changes shall be subject  
7 to public notice and comment in accordance with  
8 Title VII of this Act. Upon application by February  
9 1 of the applicable year, a new EGU shall receive  
10 allowances from the Set-Aside only for the control  
11 period (as defined by USEPA) during which it first  
12 operates and the next succeeding control period.  
13 After an EGU has received allowances as a new EGU,  
14 it shall then become and receive pro-rata allowances  
15 as an existing EGU in subsequent years based on the  
16 EGUs heat input during the previous year's control  
17 period.

18 (A-2) Any allowances allocated to a new EGU  
19 from the Set-Aside may be used only by that new EGU  
20 and only for the first 2 control periods during  
21 which that new EGU operates. Any unused allowances  
22 from the Set-Aside shall be returned to the  
23 Set-Aside for distribution on a pro-rata basis  
24 according to rules adopted by the Board.

25 (A-3) The Agency shall allocate allowances on  
26 a pro-rata basis to all EGUs based on the amount of  
27 NOx emitted per unit of electrical output produced  
28 by that EGU (pounds per Mw-Hr).

29 (d-5) The Agency may charge EGUs for the allowances that  
30 the Agency issues to them in an amount reasonably sufficient  
31 for the Agency to recover its annual costs for administering  
32 the NOx Trading Program. The Agency may charge new EGUs for  
33 allowances from the Set Aside in an amount that it determines  
34 to be fair market value, but the higher charge shall not be

1 applicable for new EGUs whose NOx emissions are subject to a  
2 Best Available Control Technology emission limitation  
3 pursuant to 40 CFR 52.21 or a Lowest Achievable Emission Rate  
4 limitation pursuant to 35 Ill. Adm. Code Part 203.

5 ~~(B)--The-Agency-may-charge-EGUs--that--commence~~  
6 ~~commercial--operation,--as-defined-in-40-CFR-Section~~  
7 ~~96.2,--on--or--after--January--1,--2003,--for--the~~  
8 ~~allowances-it-issues-to-them.~~

9 (e) The Agency may adopt procedural rules, as necessary,  
10 to implement the regulations promulgated by the Board  
11 pursuant to subsections (b) and (d) and to implement  
12 subsection (i) of this Section.

13 (f) The regulations promulgated by the Board pursuant to  
14 subsections (b) and (d) of this Section shall not be enforced  
15 until the later of May 1, 2003, or the first day of the  
16 control season subsequent to the calendar year in which all  
17 of the other states subject to the provisions of the NOx SIP  
18 Call that are located in USEPA Region V or that are  
19 contiguous to Illinois have adopted regulations to implement  
20 NOx trading programs and other required reductions of NOx  
21 emissions pursuant to the NOx SIP Call, and such regulations  
22 have received final approval by USEPA as part of the  
23 respective states' SIPS for ozone, or a final FIP for ozone  
24 promulgated by USEPA is effective for such other states.

25 (g) To the extent that a court of competent jurisdiction  
26 finds a provision of 40 CFR Part 96 invalid, the  
27 corresponding Illinois provision shall be stayed until such  
28 provision of 40 CFR Part 96 is found to be valid or is  
29 re-promulgated. To the extent that USEPA or any court of  
30 competent jurisdiction stays the applicability of any  
31 provision of the NOx SIP Call to any person or circumstance  
32 relating to Illinois, during the period of that stay, the  
33 effectiveness of the corresponding Illinois provision shall  
34 be stayed. To the extent that the invalidity of the

1 particular requirement or application does not affect other  
2 provisions or applications of the NOx SIP Call pursuant to 40  
3 CFR 51.121 or the NOx trading program pursuant to 40 CFR Part  
4 96 or 40 CFR Part 97, this Section, and rules or regulations  
5 promulgated hereunder, will be given effect without the  
6 invalid provisions or applications.

7 (h) Notwithstanding any other provision of this Act, any  
8 source or other authorized person that participates in the  
9 NOx Trading Program shall be eligible to exchange NOx  
10 allowances with other sources in accordance with this Section  
11 and with regulations promulgated by the Board or the Agency.

12 (i) There is hereby created within the State Treasury an  
13 interest-bearing special fund to be known as the NOx Trading  
14 System Fund, which shall be used and administered by the  
15 Agency for the purposes stated below:

16 (1) To accept funds from persons who purchase NOx  
17 allowances from the Agency;

18 (2) To disburse the proceeds of the NOx allowances  
19 sales pro-rata to the owners or operators of the EGUs  
20 that received allowances from the Agency but not from the  
21 Agency's set-aside, in accordance with regulations that  
22 may be promulgated by the Agency; and

23 (3) To finance the reasonable costs incurred by the  
24 Agency in the administration of the NOx Trading System.

25 (Source: P.A. 91-631, eff. 8-19-99.)

26 Section 99. Effective date. This Act takes effect upon  
27 becoming law.